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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/730,627 | 12/06/2000 | Mohan Vishnupad | 370-19 | 9463 |

7590 03/18/2003

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| EXAMINER |
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MRUK, BRIAN P

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| ART UNIT | PAPER NUMBER |
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1751

DATE MAILED: 03/18/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Applicati n No. | Applicant(s) | |
| | 09/730,627 | VISHNUPAD, MOHAN | |
| | Examiner | Art Unit | |
| | Brian P Mruk | 1751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7-9 and 11-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-9 and 11-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>14</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 18, 2003 has been entered.
2. This Office action is a response to applicant's remarks filed on February 18, 2003. Currently, claims 1, 2, 5, 7-9 and 11-40 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 5 and 9.
4. The rejection of claims 1, 2, 5, 7-9, 11-16, 21, 23, 24, 27-34 and 39 under 35 U.S.C. 102(e) as being anticipated by Cen et al, U.S. Patent No. 6,428,799, is maintained for the reasons of record found in Paper No. 9, Paragraph No. 9.

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5. The rejection of claims 17-20, 22, 25, 26, 35-38 and 40 under 35 U.S.C. 103(a) as being anticipated by Cen et al, U.S. Patent No. 6,428,799, is maintained for the reasons of record found in Paper No. 9, Paragraph No. 11.

NEW GROUNDS OF REJECTION

Claim Objections

6. Claims 22, 25, 29, 31 and 40 are objected to because of the following informalities:

In instant claims 22, 25 and 40, the term "sarcosynates" should be amended to recite "sarcosinates" for grammatical purposes.

In instant claim 29, a period should be inserted at the end of the claim for grammatical purposes.

In instant claim 31, the period after the term "polyol" should be deleted for grammatical purposes. Appropriate correction is required.

7. Applicant is advised that should claim 13 be found allowable, claim 30 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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8. Applicant is advised that should claim 14 be found allowable, claim 31 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

9. Applicant is advised that should claim 15 be found allowable, claim 32 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Response to Arguments

10. Applicant's arguments filed February 18, 2003 have been fully considered but they are not persuasive.

Applicant argues that the phrase "substantially anhydrous" is defined as a composition that, other than the water of hydration contained in the various components used to formulate the product, has no free water added to the composition (see page 3, lines 3-5 of the instant application). However, the examiner maintains that the amount of the water, and not where the water originates from, defines the phrase "substantially

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anhydrous", since the instant claims are drawn to a composition. Even if the phrase "substantially anhydrous" is defined as a composition that, other than the water of hydration contained in the various components used to formulate the product, **has no free water added to the composition**, the examiner asserts that this definition of the phrase "substantially anhydrous" would have been examined as a product by process limitation, and thus, the same rejections of record would have been made by the examiner, as per the requirements of MPEP Section 2113. Therefore, the examiner maintains that the phrase "substantially anhydrous" is defined as a composition which contains less than 5% by weight of water, as defined by applicant on page 3, lines 4-5 of the instant specification.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM
Brian Mruk
March 14, 2003

Brian P. Mruk
Brian P. Mruk
Patent Examiner
Tech Center 1700